

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

| | | |
|--|---|------------------------------------|
| GWENDOLYN P. MCQUIRTER and |) | |
| CHARLES E. MCQUIRTER, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| CITY OF MONTGOMERY, |) | |
| K.C. BENTLEY, and RON COOK, |) | |
| |) | |
| Defendants and Third-Party Plaintiffs, |) | |
| |) | |
| v. |) | Case No. 2:07-cv-234-MEF-WC |
| |) | |
| TIFFANY MICHELE RILEY and |) | |
| ROOSEVELT PERKINS, |) | |
| |) | |
| Third-Party Defendants. |) | |

APPLICATION FOR DEFAULT
AGAINST THIRD PARTY DEFENDANTS,
TIFFANY MICHELE RILEY AND ROOSEVELT PERKINS

COMES NOW Third Party Plaintiffs, City of Montgomery (“the City”), Cpl K. C. Bentley (“Bentley”) and Lt. Ron Cook (“Cook”), by and through the undersigned attorney, and apply for default pursuant to Rule 55 of the *Federal Rules of Civil Procedure* and state the following

1. The Third Party Complaint was filed on July 31, 2007, naming as third party defendants, Tiffany Riley (“Riley”) and Roosevelt Perkins (“Perkins”). (*Doc. 25*).
2. The Third Party Complaint alleges one count of fraud by Tiffany Riley

and one count of fraud by Roosevelt Perkins.

3. The Summons was issued on August 2, 2007. (*Doc. 26*).
4. The return receipt card showing service on the Summons and Third Party Complaint was signed by Tiffany Riley for Tiffany Riley and returned on August 4, 2007. (*Doc. 27*).
5. The Answer was due for Tiffany Riley on August 24, 2007.
6. The Summons and Third Party Complaint for Roosevelt Perkins was “Returned to sender, Unclaimed” on August 22, 2007. (*Doc. 28*).
7. An alias Summons was issued for Roosevelt Perkins on September 5, 2007 (*Doc. 29*).
8. The return receipt card showing service of the alias was received without a signature on September 7, 2007 and that the Answer was due on September 26, 2007. (*Doc. 30*).
9. On September 7, 2007, Roosevelt Perkins contacted the legal department for the City of Montgomery and spoke with Allison H. Highley, Associate City Attorney regarding the Third Party Complaint. (*DX 8, Highley Affidavit*). Mr. Perkins stated that he had received the Third Party Complaint and that wanted to resolve the matter short of litigation. (*DX 8, Highley Affidavit*).
10. Mr. Perkins also left a phone number. Ms. Highley called him early the next week but he did not return the phone call. (*DX 8, Highley Affidavit*).
11. Third Party Defendants have failed to plead or otherwise defend this

12. Third Party Plaintiffs are entitled to entry of default pursuant to Rule 55, *Federal Rules of Civil Procedure*.
 13. Third Party Plaintiffs are filing a Motion for Default Judgment contemporaneously herewith.
 14. Affidavits of Allison H. Highley and Kimberly O. Fehl are attached hereto. (*DX 8, Highley Affidavit and DX 9, Fehl Affidavit*).
- Respectfully submitted this 1st day of November, 2007.

/s/ Kimberly O. Fehl
Kimberly O. Fehl (FEH001)

OF COUNSEL:
City of Montgomery
City Attorney's Office
P. O. Box 1111
Montgomery, AL 36101-1111
Telephone: (334) 241-2050
Facsimile: (334) 241-2310

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November, 2007, I electronically filed the foregoing with the Court of the Clerk using the CM/ECF system to be upon the following:

Jerry M. Blevins, Esq.
Law Office of Jerry M. Blevins
Hillwood Office Center
2800 Zelda Road, Suite 200-3
Montgomery, Alabama 36106

I hereby certify that foregoing has been served upon the following by U. S. Mail, postage prepaid on this 1st day of November, 2007:

Tiffany Michele Riley
846 Corbett Street
Montgomery, Alabama 36108

Roosevelt Perkins
3430 Gaston Avenue
Montgomery, Alabama 36105

/s/ Kimberly O. Fehl
Of Counsel

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GWENDOLYN P. MCQUIRTER, and)
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Plaintiffs,)

v.)

CITY OF MONTGOMERY,)
K.C. BENTLEY, and RON COOK,)
Defendants and Third-Party Plaintiffs,)

v.)

Case No. 2:07-cv-234-MEF-WC

TIFFANY MICHELE RILEY, and)
ROOSEVELT PERKINS,)
Third-Party Defendants.)

AFFIDAVIT OF ALLISON H. HIGHLEY

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

Before me, a Notary Public in and for said State and County, personally appeared Allison H. Highley and, after first being duly sworn by me, did depose and state to me:

My name is Allison H. Highley. I am over nineteen years of age, have first-hand knowledge of the facts contained herein and am competent to testify thereto.

I am currently employed as an Associate City Attorney in the Legal Department of the City of Montgomery. I work with Attorney Kim O. Fehl, the attorney of record for Defendants City of Montgomery and Officers Bentley and Cook.

On September 7, 2007, Ms. Fehl was out of the office when Roosevelt Perkins called the City of Montgomery Legal Department to talk about the Complaint he had received. I had been assisting Ms. Fehl on this case, so the call was forwarded to me.

After introducing myself, I asked Mr. Perkins if he had hired a lawyer and explained that I could only speak to his attorney if he was represented by counsel. Mr.

Perkins indicated that he had not spoken to a lawyer about the case.


Mr. Perkins stated to me that he had received the Third Party Complaint and that he wanted to resolve the matter short of litigation. I then asked him what he meant by that, and Mr. Perkins said he would do "whatever it takes to make this thing go away." He went on to say that he was wrong to bond Tiffany Riley out under a false name, but that he just was not thinking. Mr. Perkins said he made a mistake and wanted to admit his wrongdoing and do what it takes to settle this matter.

In response, I told Mr. Perkins that I would convey what he was saying to Ms. Fehl, the attorney handling the case, but that there probably was not a lot the City could do to help him out. I told Mr. Perkins that he would have to comply with the Summons and suggested he consult with an attorney. I also suggested that he might ask the clerk for help filing his Answer to the Complaint.

Mr. Perkins gave me a telephone number where I could reach him. I called and left a message at that number early the next week, but my call was not returned. I have not had any further contact with Mr. Perkins since that time.

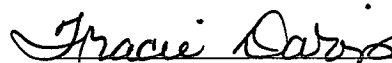
I have read the foregoing affidavit consisting in total of two pages and state that it is true and correct to my present knowledge and information.

Further affiant saith not.


Allison H. Highley
Associate City Attorney / Affiant

SWORN to and SUBSCRIBED before me this the 30th day of October, 2007.




Notary Public
My commission expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Mar 28, 2011
BONDED THRU NOTARY PUBLIC UNDERWRITERS

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CHARLES E. MCQUIRTER,)

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Case No. 2:07-cv-234-MEF-WC

TIFFANY MICHELE RILEY and)
ROOSEVELT PERKINS,)

Third-Party Defendants.)

AFFIDAVIT OF KIMBERLY O. FEHL

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

COMES NOW Kimberly O. Fehl, counsel of record for Third Party Plaintiffs,
City of Montgomery ("the City"), Cpl K. C. Bentley ("Bentley") and Lt. Ron Cook
("Cook"), and states the following

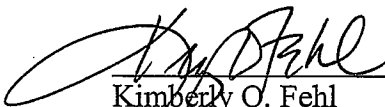
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9. The above facts are in the record of the Court, and I have concluded that Third Party Defendants have failed to plead or otherwise defend this action.
10. Third Party Plaintiffs are entitled to entry of default pursuant to Rule 55, *Federal Rules of Civil Procedure*.

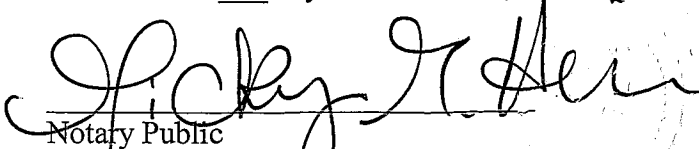
I have read the foregoing affidavit consisting in total of two pages and state that it is true and correct to my present knowledge and information.

Further affiant saith not.



Kimberly O. Fehl
Senior Staff Attorney / Affiant

SWORN to and SUBSCRIBED before me this the 15th day of November, 2007.



Notary Public
My commission expires: 10/16/09